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June 14, 2019

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141; *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers; Business Data Services in an Internet Protocol Environment; Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 17-144; *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143; *Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25

Dear Ms. Dortch,

The comments and replies to the Commission's April 15, 2019, Public Notice[1] make clear that there is insufficient competition to justify further deregulation of the markets for transport service between the incumbent local exchange carrier ("ILEC") wire centers. Recognizing that the record evidence—including the *April Data Tables*— fails to support nationwide forbearance from transport UNEs, USTelecom has recently abandoned its request for forbearance from its obligations to provide transport on an unbundled basis where one end of the route is a Tier 3 wire center (which includes all dark fiber transport).[2] As INCOMPAS members have explained, the lack of feasible alternatives to ILEC transport is a common problem throughout their service areas. The residential and business customers in these areas continue to depend on competitive providers that offer advanced voice and data services, in many cases because the ILEC has neglected to make the necessary investments at the central offices (and remote locations) to do so. Access to ILEC DS1 and DS3 transport on an unbundled basis thus remains essential to these customers' ability to receive service. INCOMPAS submits the

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1 *See Wireline Competition Bureau Seeks Focused Additional Comment in Business Data Services and USTelecom Forbearance Petition Proceedings and Reopens Secure Data Enclave*, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, RM-10593, Public Notice, DA-19-281 (rel. Apr. 15, 2019) ("*Public Notice*").

2 *See* Letter from Patrick R. Halley, Senior Vice President, Advocacy and Regulatory Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 3 (filed May 6, 2019) ("USTelecom May 6 Ex Parte") (revising requested relief from unbundling obligations with respect to transport services offered on routes between wire centers that are either Tier 1 or Tier 2).

following as a summary of the record evidence from the declarations of service providers explaining the importance of continued access to unbundled ILEC transport facilities, focusing here on the DS1 and DS3 transport circuit outside of Tier 3 areas.

1. **Competitive providers use unbundled DS1 transport to provide both traditional TDM services and IP-based data services.**
    - "Socket also relies upon . . . DS1 EELs to provide voice and data services to areas that cannot be reached with xDSL-capable loops. Socket can provide standard TDM voice services over these as well as packet-based services, dedicated internet, and advanced data and telecommunications services."[3]
    - "The services [Socket's] customers need ranges from basic local and long distance voice service, ISDN-PRI services, private lines, and dedicated Ethernet services to more advanced and sophisticated services such as MPLS and WAN services and related services such as data backup, storage, and retrieval services."[4]
    - "Allstream uses DS1 and DS3 loops when xDSL-conditioned 2-wire loops are not available, or are too long to support high speed data service to the customer. Allstream also uses UNE transport in conjunction with DS1 and DS3 loops, as EELs, to serve some of these customers."[5]
    - "[Virginia Global Communications Systems] also purchases DS1 loops as well as DS1 transport UNEs, and UNE subloops for connection to our collocated remote cabinets when the ILEC has installed remote cabinet sites to shorten the loop length. . . . DS1 UNE's are used for backhaul transport between remote location and Central Office."[6]

2. **Competitive providers use unbundled DS1 transport to serve both residential and business customers.**
    - "Mr. Janjic spoke of Virginia Global's provision of service to both residential and business customers in rural Rockbridge County, Virginia. He explained that in some wire centers the incumbents have not upgraded networks with the necessary equipment to provide broadband services. As a result, he explained that his company – using xDSL-capable copper loops – is the *only broadband provider* to some of Virginia Global's customers. He also explained that they bond several

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[3] Declaration of R. Matthew Kohly ¶ 15 ("Socket Decl."), attached as Attachment 15 to Opposition of INCOMPAS, FISPA, Midwest Association of Competitive Communications, and the Northwest Telecommunications Association, WC Docket No. 18-141 (filed Aug. 6, 2018) ("Competitive Carriers Group Opposition").

[4] *Id.* ¶ 35.

[5] Declaration of Douglas Denney ¶ 12, attached as Attachment 4 to Competitive Carriers Group Opposition ("Allstream Decl.")

[6] Declaration of Dusan Janjic ¶¶ 6-7, attached as Attachment 16 to Competitive Carriers Group Opposition ("Virginia Global Decl.")

UNE DS1 transport circuits to provide transmission from the central office to a remote location (cabinet with electronics) from which they deliver xDSL service to their customers including residential customers."[7]

- "First Communications uses [DS1 and DS3] UNE transport from 16 of those incumbent LEC wire centers to provide service to residential customers (in addition to small and medium-sized business customers). These residential customers receive voice and broadband service from First Communications. Because First Communications' residential and business customers are served using DS0 and DS1 UNE loops that terminate to the incumbent LECs' central offices, First Communications cannot "bypass" those offices by using third-party transport that may exist within one-half mile of the incumbent LEC end office."[8]

3. **Because ILECs have been slow to invest in the electronics necessary to provide advanced services, competitive providers have been essential in delivering these services and driving others to do so. In some cases, the competitive provider is the only option available to customers for advanced services.**

    - "Allstream has used UNEs to provide innovative services over time, often well in advance of our ILEC competitors. . . . Allstream's aggressive roll out of new products and services results in the roll out of similar services and offerings from our competitors and has driven the incumbent carrier to upgrade its services in order to better provide services to end users."[9]
    - "[Digital West's] entry utilizing UNEs has pushed other broadband providers to upgrade their services. . . . AT&T has begun building some limited fiber to high end homes in San Luis Obispo."[10]
    - "In many areas the ILEC has very little competition and will only improve infrastructure when competitive carriers enter the market"[11]

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[7] Letter from John T. Nakahata, Counsel to INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-141, 17-144, 16-143, 05-25, at 3-4 (filed June 3, 2019); *see also* Attachment 2 to Letter from Karen Reidy, Vice President, Regulatory, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed June 12, 2019) (diagram of Virginia Global's colocation at ILEC central office and cabinet).

[8] Second Supplemental Declaration of Mark Sollenberger ¶¶ 4-5, attached to Letter from Tamar E. Finn, Counsel to First Communications LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 (filed June 6, 2019).

[9] Allstream Decl. ¶ 19.

[10] Declaration of Jeff Buckingham ¶ 13, attached as Attachment 6 to Competitive Carriers Group Opposition ("Digital West Decl.").

[11] First Supplemental Declaration of Dan Bubb ¶ 2 ("Gorge Networks Supp. Decl."), attached as Attachment 6 to Comments of INCOMPAS, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 (filed May 9, 2019) ("INCOMPAS Transport PN Comments").

- "If it weren't for [Gorge Networks's] fiber construction, some customers would be without broadband service at all due to the lack of capacity available by the ILEC. For instance, we are deploying fiber in Cascade Locks where portions of the community have requested broadband service from the ILEC and have been declined due to lack of facilities."[12]
- "The loss of UNE transport would eliminate the availability of EELs, which [InfoStructure] use[s] to provide voice services such as a PRI to remote customers. We provide a class of business PRI services to schools and businesses which would not be able to get the same service from the ILEC because they have not upgraded their facilities with the technology to provide such services."[13]
- "We have experienced that upon our entry into rural markets using existing middle mile systems and UNEs, existing providers have been forced to upgrade their networks to keep a significant market share. . . . Occidental, CA is a market where the loss of our services could be detrimental. There have been no substantial upgrades on AT&T's part since our entry into the market. This fire-prone community in Sonoma County would be left without adequate broadband and vital communication services."[14]
- "Access to unbundled transport is necessary in [Digital West's] service areas because there often is no alternative provider that can provide the level of service necessary for our customers, or there is no alternative provider at all, and in many cases the ILEC does not offer modern services such as PRI or SIP."[15]
- "Losing access to unbundled DS1 and DS3 transport threatens the continued availability of competitive alternatives for [First Communications's] customers. It will also result in loss of innovative service offerings we provide that the ILEC often does not to the size and location of our customers; these include MPLS, Cloud IP PBX, SD WAN and other enhanced managed services."[16]
- "Some of [Virginia Global's] customer base does not have any other option for their broadband service. Approximately 150 households would likely lose any broadband option."[17]

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[12] Declaration of Dan Bubb ¶ 10, attached as Attachment 9 to Competitive Carriers Group Opposition ("Gorge Networks Decl.").

[13] Declaration of Jeff Rhoden ¶ 10, attached as Attachment 12 to Competitive Carriers Group Opposition ("InfoStructure Decl.").

[14] Declaration of Raul Alcaraz ¶ 10, attached as Attachment 14 to Competitive Carriers Group Opposition ("Race Decl.").

[15] First Supplemental Declaration of Jeff Buckingham ¶ 4, attached as Attachment 4 to INCOMPAS Transport PN Comments ("Digital West Supp. Decl.").

[16] Declaration of Mark Sollenberger ¶ 7, attached as Attachment 5 to INCOMPAS Transport PN Comments ("First Communications Supp. Decl.").

[17] Virginia Global Decl. ¶ 12.

4. **There are significant barriers to using non-ILEC transport, even when other providers may have fiber within the vicinity of ILEC wire centers.**

    - "Gorge Networks requires access to unbundled transport in our service areas because there often is no alternative provider that can provide the level of service necessary for our customers, and in many cases, there is no alternative provider at all. In the Oregon community of Odell, and the Washington communities of Lyle, Dallesport (pop. 1,202), Goldendale (pop. 3,407), White Salmon (pop. 2,244) and Stevenson (pop. 1,465), for example, no competitive facilities-based providers are collocated at the ILEC end offices that are closest to our customers. Cable providers in these communities do not offer transport out of an ILEC end office. As a result, the only way we can transport our customers' traffic from an end office is to use the ILEC's DS1 and DS3 facilities."[18]
    - "Where there might be a competitor in a town, it may only consist of a cable company serving a town within part of the county or a fiber carrier that is only providing middle-mile services to carriers or large, enterprise-level customers but provides no voice services and is not collocated in the incumbent local exchange company ("ILEC") central office. The presence of this type of carrier does not mean there are competitive choices for smaller customers that can be served by DS1 transport combined with DS1 loops, nor do these competitors provide a competitive option for DS1 transport for Socket."[19]
    - "TDM applications such as PRI, alarm lines and elevator lines also do not work well with the cable technology because they require digital technology only available on TDM."[20]

5. **Access to Unbundled Transport Is Critical to Competitive Fiber Deployment.**

    - "[I]n many smaller rural central offices where Dialog has not yet been able to invest in collocation, Dialog uses ILEC transport to deliver service to end users via UNE loop/UNE transport combination circuits. Access to UNE transport is essential to developing the customer base necessary to support an investment in new transport and loop facilities. Dialog is only able to deploy its own network infrastructure in areas with sufficient proven customer demand to support that investment. . . . If the company's only option is to serve customers in a rural area using ILEC special access circuits for transport, the increased cost will prevent

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[18] Gorge Networks Supp. Decl. ¶ 4.

[19] First Supplemental Declaration of R. Matthew Kohly ¶ 2 ("Socket Supp. Decl."), attached as Attachment 7 to INCOMPAS Transport PN Comments.

[20] First Communications Supp. Decl. ¶ 6.

both serving the customer in the short-term and additional investment in our own network in the long-term."[21]

- "Because there are no competitive transport alternatives available at the ILEC wire centers where we are collocated, if Digital West loses access to unbundled transport, the only available option is to switch to ILEC special access transport. In that case, the increased cost would prevent us from continuing to invest in our own fiber facilities."[22]
- "In parts of Hood River (pop. 7,167) and The Dalles (pop. 13,620), [Oregon] and Goldendale and White Salmon, [Washington], [Gorge Networks] ha[s] been able to develop a critical mass of customers and have since deployed fiber to replace the existing UNE based services. If we have no choice but to use commercial ILEC special access circuits for transport back to our fiber headend, the increased cost would delay or prevent us from continuing to invest in our own fiber facilities."[23]
- "In every market where Socket has and currently is deploying its own fiber network, Socket relied upon UNEs to first start building a customer base. Socket was able to use that customer base to justify and help fund the construction of its network. EELs were and continue to be an important component of this because they allow Socket to reach distant markets to build that customer base."[24]
- Socket overbuilt the small town of Fayette, [Missouri] with fiber to the residences, businesses, and critical community institutions. This small town with less than 3,000 people has three middle-mile fiber transport carriers, two of which also offer only data service to enterprise customers. . . . Initially, Socket was able to build a customer base to serve small and medium-size businesses through the use of DS1 transport combined with DS1 loops. With that customer base, Socket was able to deploy a fiber network and serve those customers and gain additional customers as it built the broadband network. . . . Examples such as this would not be possible without access to unbundled DS1 transport."[25]

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[21] First Supplemental Declaration of James Bellina ¶¶ 4, 8, attached as Attachment 3 to INCOMAS Transport PN Comments ("Dialog Supp. Decl.").

[22] Digital West Supp. Decl. ¶ 7.

[23] Gorge Networks Supp. Decl. ¶ 7.

[24] Second Supplemental Declaration of R. Matthew Kohly ¶ 3, attached as Attachment 1 to Reply Comments of INCOMPAS, WC Docket Nos. 18-141, 17-144, 16-143, 05-25 (filed May 28, 2019).

[25] Socket Supp. Decl. ¶¶ 6-7.

Please feel free to contact me if you have any questions.

Sincerely,

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